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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
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9 FREDERICK BANKS,

10 Petitioner,

11 vs.

12 MARK HORNAK, et al.,

13 Respondents.

Case No. 2:16-cv-01151-GMN-NJK

ORDER

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15 Petitioner is in custody at FCI Butner, in North Carolina.¹ He has filed an application to
16 proceed in forma pauperis (ECF No.1) and a petition for a writ of habeas corpus pursuant to 28
17 U.S.C. § 2241. The court will dismiss this action.

18 If petitioner is not attacking his sentence, then the correct respondent is the warden of the
19 prison where petitioner is held. 28 U.S.C. § 2242. The correct district court in which petitioner
20 should file the petition is the district court where the warden is located. 28 U.S.C. § 2241(a). In this
21 case, it would be the United States District Court for the Eastern District of North Carolina. If the
22 petition could be construed as a motion attacking petitioner's sentence, then petitioner would need
23 to file the motion in the court where he was convicted. 28 U.S.C. § 2255(a). Based upon the name
24 of the first respondent, the Honorable Mark Hornak, that court would be the United States District
25 Court for the Western District of Pennsylvania.

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28 ¹The court obtained that information on-line. Petitioner has given his address as the offices
of the Federal Bureau of Prisons in Washington, DC.

1 The court will not transfer this action to either of those two courts. First, the petition is so
2 vague that the court cannot determine whether it should be a petition under § 2241 or a motion
3 under § 2255, and thus the court cannot determine which court would be the correct court. Second,
4 even if it was clear which court was the correct court, it still would not be in the interests of justice
5 to transfer a vague petition to that court. Petitioner needs to compose a clear, concise petition or
6 motion and file it in that court.

7 Reasonable jurists would not find the court's conclusions to be debatable or wrong, and the
8 court will not issue a certificate of appealability.

9 IT IS THEREFORE ORDERED that the application to proceed in forma pauperis (ECF No.
10 1) is **DENIED**.

11 IT IS FURTHER ORDERED that this action is **DISMISSED**. The clerk of the court shall
12 enter judgment accordingly and close this action.

13 IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**.

14 DATED: May 25, 2016



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16 Gloria M. Navarro, Chief Judge
17 United States District Court

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